

John Smith Esq.
FREE CHURCH OF SCOTLAND.

NO. 2.

THE MERITS OF THE CASE,

BEING

AN ADDRESS

**BY DR. M'KAY, OF DUNOON, TO HIS PARISHIONERS, IN
THE YEAR 1840,**

WITH

AN ORIGINAL APPENDIX,

**ILLUSTRATIVE OF THE PROGRESS OF THE CONTROVERSY,
SINCE 1840.**

Read and Circulate !

MONTREAL

**JOHN C. BECKET, PRINTER AND PUBLISHER
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PREFATORY NOTE.

The following Pamphlet is from the pen of Dr. M'INTOSH M'KAY, of Dunoon, well known not only as a pious Minister of the Gospel, but as a profound and accomplished scholar. It was addressed to his parishioners, at a comparatively early period of the church controversy, viz. in the year 1840, when an appeal was being made to Parliament by the parishes of Scotland, for protection against the despotic decisions of the Court of Session. The grossest misrepresentations, with regard to the views and purposes of the Evangelical majority in the church, who stood in defence of the rights of the Christian people, had been zealously circulated; and in wide and remote parishes, where the inhabitants had few opportunities of meeting together, these false accusations were in danger of being believed. To disabuse the minds of the people, the faithful pastors were under the necessity of convening their parishioners, and explaining to them the real state and merits of the question. These meetings, which were held in the parish church or school house, having been in many cases dispersed by interdicts from the civil courts, served on them after they had assembled, the ministers had no alternative but to publish the information they had intended to communicate. In these circumstances, the following address was originally composed. It is expressed in a style the most simple, and best adapted to the generality of those for whom it was written. It has been selected to occupy an early place in this series, as calculated to exhibit a singularly clear and correct view of the first stages in this important controversy.

A few detached passages have been omitted, as not being of general application. An appendix has been added, with the view of filling up the outline of the narrative since the year 1840, by a

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brief notice of some of the most prominent cases which have occurred since that period. It will thus be seen how the minor point, or claim of jurisdiction concerning patronage, gradually brought the great principle—that the Lord Jesus Christ has a right to rule in his own house, by means of his own appointing, to be invaded and denied; and how imperative it is on every Christian Church to resist the beginnings of encroachment on her spiritual rights—to defend the outworks to the last, if she would have the citadel rest secure.

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AN ADDRESS,

BY Rev. Dr. M'KAY, OF DUNOON, TO HIS PARISHIONERS.



You all understand the meaning of Patronage—a certain person having a right, by the law of the land to appoint a Minister to a Parish. But *must* the Parishioners receive *any* Minister, just because the Patron has appointed him? Many think that they must. But that is not the law of the Church; nor has it been the law of the land. This I shall endeavour to make plain to you.

From the beginning of the Church of Scotland, the law of Patronage existed till the year 1690. But the Church of Scotland always held and expressed it as a law of her own, drawn from the word of God, as all her laws are, "That no Minister shall be intruded into a Parish contrary to the will of the Congregation." Now this law of the Church was agreed to by the King and Parliament of Scotland; and then it became the law of the land, as much as the law of the Church. It was indeed often called in question by Kings and rulers, who wished to alter this law, and many other laws, desiring the Church should obey the will of the King in all things. But though Kings and rulers did sometimes, in generations past, even change the laws, the Church of Scotland always did maintain, and much did our forefathers suffer in maintaining it, that no earthly King

must rule the Church ; but that it must be ruled by the word of God, according to the will and laws of its Great King and Head, Jesus Christ.

Many of you know that the same Kings reigned over both England and Scotland, long before England and Scotland were joined together into one kingdom. Till they were joined together by what is called *the Union*, in the year 1707, Scotland had its own Parliament, and that Parliament, with the King, made the laws of Scotland ; while the Parliament of England, with the King, made the laws of England.

Now, in the year 1690, when King William III. came to be King of England and Scotland, he made a law, together with the Parliament of Scotland, that Patronage in Scotland should come to an end, and that Ministers should be chosen in this way :—When a Parish became vacant, the Heritors and the Elders should choose a Minister for the Parish. Then the people heard that Minister preach, perhaps more than once, or twice ; and if the Members of the Church in that Parish, or the greater number of them, were content that this Minister had gifts suitable for the Parish, then he was settled as the Parish Minister, the Members of the Church, or the greater part of them, giving him a *Call*. This was the way of choosing Ministers in Scotland, from the year 1690 till the year 1707, when the Union between England and Scotland made one kingdom of the two, and Scotland had no longer a Parliament of its own.

Mark this, however ; it was made a condition in the Union, that the Church of Scotland should continue, in all time to come, to be the same as it then was, and to have the same laws as it then had.

But very soon a change was made, notwithstanding. In the year 1711, a law was made by the Parliament, and Queen Anne, that Patronage should be put again in the same way as it was before the year 1690. The law now came to be this—that, instead of the Heritors and Elders of a Parish choosing a Minister for the Parish, a *Patron* should choose and appoint the Minister. But observe, and mark it *well*, this law of Queen Anne appointed, that when the Patron had sent a Minister to a Parish, he must be heard by the Congregation, and just in the same way, as when the Heritors and Elders choose him, the Members of the Church in the Parish, or the greater part of them, must be satisfied with his gifts, and give him a *Call* before he could be placed as the Minister of that Parish.

If you bear in mind that that is the law of the land to this day, you can easily see how it agrees with the law of the Church, which says, “that no Minister shall be *intruded*, or put in, to a Parish, *contrary to the will of the Congregation*.”

Now, you will ask, Has this law always been kept, when Ministers were put in? I answer, No. It was not. But that was not the fault of the law itself. Nor was it the fault of the people. And the Court of Session took nothing to do with it. It was just the fault, and, in my opinion, the great Sin, of the Church itself; and not of the Members of the Church, but of the Ministers of the Church in particular, and of many of its Elders also.

I shall endeavour to tell you how this evil came in. It was in this way—When a Minister was named by a Patron to a Parish, he gave his Presentation in to the Presbytery. He was ordered by the Presbytery to

preach in that parish. Well, if the Congregation, or the Members of the Church in that Parish, felt that this man's gifts were not of a kind to be useful to them, or that he did not preach the Gospel in a way to edify them—when the day came for giving the *Call*, according to the law of the Church, and the law of the land—the Congregation, or the greater part of them, told the Presbytery, We are not satisfied with this man's gifts; we do not think he will edify our souls: the Presbytery might say to them, What can you *prove* against him? We have examined him, and find him a good scholar, and we know these things; and we surely know the Gospel better than you, the people, can know it. Have you any objection to this man's learning, or to his moral character; or can you *prove* that he preached to you anything *contrary* to the Bible? If you cannot prove any thing of that kind, you see, he has the Presentation from the Patron, and we, the Presbytery, must put him in. That was the way.

But, you will ask me again, Why did not the Parishioners complain of this to a higher Court than the Presbytery—to the General Assembly? So they did, and very often. The people of many a Parish in Scotland did so. But when, in the General Assembly, there was a greater number of Ministers and Elders who took the side of the Patrons, than the side of the people, when it came to the vote, the stronger side got the better of the weaker side, and ordered the Minister to be put in, whether the Parishioners were pleased or not; and many a time a Presbytery had to get soldiers with them, when the people's discontent was great; and the Minister was often put in at the point of the bayonet. Now, when this happened in one parish after another, the people of other Parishes began to see that it was in vain

for them to complain to the General Assembly at all ; and in this way, the real law came to be almost forgotten entirely, and perhaps many of yourselves do not know, or did not till now, what the real law was, or is. *All* the Ministers however of every Presbytery, or *all* the Ministers and Elders sent every year to the General Assembly, never agreed to this mode of settling Ministers ; but those who did agree were the greater number, and they had the command. This way of putting in Ministers began, more or less, upwards of a hundred years ago. Indeed, it is nearly that time since the Ministers and Elders, who took the side of the Patrons, had the upper hand completely in the General Assembly, and in the greater number of the Presbyteries in Scotland. But the weaker party were always complaining of this method of settling Ministers ; and by and by they began to be more numerous in the Church ; till, to make a long story short, in the year 1834, they were a majority ; and they then declared openly, what the law of the land and the law of the Church was ; and they made certain Regulations to prevent, in all time coming, the intrusion of Ministers contrary to the will of the Congregation. They made no new Law, as some will tell you they did ; but just declared what the real old Law was, which had been so much trampled under foot ; and they made regulations according to which that real law was now to be obeyed in the placing of Ministers.

The substance of these Regulations was this ; and mark it well :—Just, that when a Patron gives a Presentation, the Presbytery appoints the Minister who has got that Presentation, to preach in the Parish two, or three Sabbaths, or even more ; and then, when a day is named for giving the *Call*, (and the Parish has full notice of it,) if the greater number of the Male Heads of

Families in the Parish who are Members of the Church, come forward, and declare solemnly on their conscience, that they think and feel, that they and their families cannot be edified by this Minister, who has got the Presentation ; then, that the Presbytery must not put him in, and the Patron must appoint another. But what if that other is no better ? Just the same thing over again. Now, this privilege is what has been called the VETO LAW. By these Regulations, you will see that the people of the Church of Scotland had got back the rights which the Law of the land had given them, as well as the law of the Church ; but of which they, for more than one hundred years, had not got the benefit. And if these Regulations were kept, no Minister could be put in, any more, against the will of the people, if they did their duty to themselves : and it is to keep *this privilege* to the people of every Parish in Scotland, that the Ministers are now suffering. When these Regulations were made by the General Assembly in the year 1834, the Government of the country, and the Crown lawyers, were aware of them, and offered no objections. Nor were they uninterested parties, inasmuch as the Sovereign is the Patron of about three hundred of the Parishes in Scotland.

When these Regulations were made, every Minister had, then, to be put in according to the Regulations ; and so they were ; and in general, it is but justice to the Patrons in Scotland to say, that they gave Presentations to Ministers with whom the Congregations were fully satisfied. Since the passing of this *Veto* law, by the General Assembly, in 1834, upwards of 150 Presentations have been given, and only ten of them were in any way so disputed, as to bring the case before the General Assembly. All was going on well and

happily, and it may truly be said, the Church of Scotland, Ministers and people, were more and more becoming alive to spiritual and eternal things, at home and abroad.

And this brings me to state now, how the present distresses of the Church have come on. The Parish of Auchterarder, in Perthshire, having become vacant, the Patron, Lord Kinnoul, presents to it a Mr. Young. The Presbytery send him to preach there, two Sabbaths or more. They appoint a day for giving the *Call*, and out of a population of 3200, only *two* Parishioners signed the *Call*; and out of all the male heads of families in the Parish who are communicants, almost all of these solemnly declared, that they and their families could not be edified by Mr. Young. The Presbytery accordingly told Mr. Young that they could not put him in. They wrote the same to the Patron, desiring him to appoint another. But the Patron and Mr. Young complained to the Court of Session. They took to the Civil Law against the Presbytery.

Now, before going farther, I dare say it may have occurred to some of you to ask why it was, when Ministers, long ago, were put in by Presbyteries, and the General Assembly, against the will of Congregations, the people of such Parishes did not complain to the Court of Session, and take the Civil Law, when they were not getting justice from the Presbyteries and the General Assembly? That is a very natural question; because if the Court of Session had, or has, a right to put Ministers in, one would think they could keep Ministers out. But this is the reason. The Law of the land, which we call the Civil Law, has acknowledged by many, many, Acts of Parliament, that the laws of Christ, and of His word, are the true foundation of the

Church of Scotland, and that according to that word, it is the Church itself that alone can perform *spiritual duties*, such as the ordaining of Ministers ; and that the Church alone, by its Presbyteries, Synods, and General Assembly, has the right to judge of the fitness or unfitness of Ministers to be ordained. The Church indeed might go wrong, and it is to be feared very often did so, in judging persons to be fit who were not fit, but yet, the Civil Law, or the Court of Session, dared not come in, and say to a Presbytery, or to the General Assembly, "You must do so and so ; we command you." And if you, my dear friends, have your own minds alive to the authority of the word of God, and to the doctrines and will of Christ, your own mind will tell you, that it was never intended of God that any worldly power should have any such authority in the Church of Christ, as to order its duties, or its government ; or to say to the Members of the Church, Such and such shall be your spiritual privileges.

Well, to go back to Auchterarder. Lord Kinnoul and Mr. Young complained to the Court of Session. The Presbytery were summoned there. And what did they say there ? They said, We have made trial of Mr. Young, and we find him unfit to be ordained Minister of Auchterarder, according to the Regulations of the General Assembly, because the greater part of the people, or communicants, in that Parish solemnly declare they cannot be edified by him. But the Court of Session gave judgment against them, saying that the Church had *no power* to make such Regulations at all ; and they ordered the Presbytery to proceed with Mr. Young's trials, that they might ordain him Minister of Auchterarder. The Presbytery refuse to do this, saying, We have tried Mr. Young already, we have found him unfit to be

ordained as Minister of that Parish, and if the Court of Session or the Civil law be allowed to tell us who are fit persons, or unfit, then we are no longer a Church Court subject to Christ, and to the authority of His word, but subject to men, and to the World. The Presbytery sought advice from the General Assembly, which declared the Presbytery to be right.

Now, here, the Presbytery and the General Assembly said and declared, so far as the Stipend, manse, and glebe go, we acknowledge the power of the Civil Law with regard to *these*. Let Mr. Young and the Patron take these as they will, under the authority of the Court of Session; but ordain Mr. Young we *cannot*, and we *shall not*, at the bidding of any power on earth. This was made known to the Court of Session. The Church made no opposition to Mr. Young taking the stipend, manse, and glebe. It makes no opposition till this moment to the civil law giving all these temporal things to Mr. Young; saying and allowing that worldly laws have to do with these worldly things. But the Court of Session will not accept all this. It continues to say; Nay, but you (the Presbytery) must proceed to *ordain* Mr. Young. Now, the question is here, which is breaking the law? The King and the Parliament never gave power to the Court of Session to force the Church to do any Spiritual act, but agreed that the Church should have liberty to do its own acts, according to its own laws. The Church, then, is surely not rebelling against the Civil Law, or the Civil power; but the Court of Session is endeavouring, not only to force the Church to ordain Mr. Young, contrary to the laws of the Church, but threatening the Presbytery with severe punishment, unless it agrees to do what the Court of Session commands it, and a law suit is raised against

the Presbytery, by Lord Kinnoul and Mr. Young, asking £16,000 of damages from the Presbytery, besides expenses to a great amount, which the Presbytery has had to pay already.

You know the Court of Session is the highest civil court in Scotland; but the House of Lords has jurisdiction over it. Then, the General Assembly went to the House of Lords, complaining of the Court of Session, and seeking protection from that Court. But the General Assembly told the House of Lords, clearly and solemnly, that whatever they, the House of Lords, did with the *stipend* of Auchterarder, the Church, as a Church of Christ, could never consent to ordain or place Ministers in Parishes according to any worldly laws, which would be contrary to the word of God. The General Assembly, in short, asked the House of Lords to protect the Church from the Court of Session; but, unhappily, the House of Lords has not done that. It said that the Court of Session was right, and the Church of Scotland wrong. What then has the Church of Scotland to do? It appointed some of its wisest Ministers to take advice with the Rulers of the nation, that the Parliament might make such a Law as would give protection to the Church in doing its duties, and such a Law as would secure to you the privilege and the right that Ministers should not be put in upon you contrary to your will.*

A Patron, and that Patron the late King, gave to a Mr. Clark, a Presentation to the Parish of Lethendy and Kinloch, in Perthshire. The day for giving the *Call* came, and by far the greater number of the Parishioners were against him; very few indeed at all for him. The Presbytery intimated to the Patron what had happened; and not like the Patron of Auchterarder, the King gave

* It is unnecessary now to state how fruitless were all the negotiations of the Church, with a view to a satisfactory legislative enactment.

a presentation to another Minister, Mr. Kessen, setting Mr. Clark aside. Notwithstanding this, Mr. Clark complained to the Court of Session ; and the Court of Session gave an Interdict, forbidding the Presbytery to place Mr. Kessen. The Presbytery went on, and the congregation having given Mr. Kessen a hearty, willing, *Call*, the Presbytery placed him as Minister of Lethendy and Kinloch, in obedience to the Law of the land and the Law of the Church. But they gave him no right, they could not, to the Stipend ; and he is without Stipend to this day. However Mr. Clark complained again to the Court of Session ; and the Court summoned the Presbytery before them, to punish them for putting in Mr. Kessen. The Presbytery answered the summons, and appeared ; but told the Judges, that they did not consider the Court of Session had any power over them as a Presbytery, with respect to the ordaining of Ministers ; that the Stipend was there, and the Court might do with it as it thought proper ; but that it was their duty as a Presbytery, to keep out Mr. Clark, and to put in Mr. Kessen, as the General Assembly had instructed and commanded them as a Presbytery, to do. The judges sent for the Presbytery again, rebuked them, as if they were *criminals*, evil-doers, and declared publicly, that if ever they or any other Presbytery should do the same again,—they, the Court of Session, would send to jail whoever did it, and keep them there till they would confess their fault.

Now, will it do, that the Court of Session should have this power ? Besides this, the Court of Session made this Presbytery pay upwards of £600 of expenses, a very heavy fine indeed, which some of them could ill afford to pay, and that too for doing their duty. And, do you not see, that it is because those Ministers and Presbyte-

ries have acted for the people, that they have suffered such things, and are threatened with so much more ? It was not surely for their own worldly profit or benefit these Ministers acted, but for the spiritual good of the people.

Another case. The Parish of Marnoch, in the Presbytery of Strathbogie, became vacant. A Mr. Edwards got the Presentation to it from the Patron. The Parishioners knew him very well, as he had been for three years assistant to the former Minister. When the *Call* day came, not one of the Parishioners would sign the call but *one* man. The heads of families, by very far the greater part of them, not only would not sign the call, but declared that they could not be edified by Mr. Edwards. Well, the Presbytery made this known to the Patron, and Mr. Edwards is set aside, and a Mr. Henry gets a new Presentation. But Mr. Edwards complains to the Court of Session ; and the Court gives an interdict, forbidding the Presbytery to proceed with the trials of Mr. Henry, or to place him, however well pleased with his gifts the Parishioners may be. But this was not enough. By and by, Mr. Edwards gets a declaration in his own favour from the Court of Session, the same as Mr. Young got in the case of Auchterarder. In this Presbytery, the greater number of the Ministers are in favour of Mr. Edwards, and against the people ; and they were quite glad of this order ; and resolved to go on to settle Mr. Edwards in the Parish of Marnoch. But other members of the Presbytery complained to the General Assembly ; and the General Assembly, by its Commission, ordered the Presbytery of Strathbogie, not to proceed with the trials of Mr. Edwards. The majority however of the Presbytery of Strathbogie, seven ministers, resolved to proceed with the trials of Mr. Edwards, notwithstanding, and declared

themselves ready to obey, not the General Assembly, but the Court of Session. They were complained of again to the Commission of the General Assembly; and in December 1839, the Commission, because of the disobedience shown by them to the Church, and as the only way to keep them back from placing Mr. Edwards in the Parish of Marnoch against the will of the whole people, suspended these seven Ministers from their office, till the next General Assembly: and ordained the other members of the Presbytery, who had not disobeyed the Church, to meet as a Presbytery, and to call upon all Ministers of the Church and Preachers, to go and assist in supplying sermons and other duties to the seven Parishes, whose Ministers were suspended. Again, however, the seven Ministers complained to the Court of Session; and the Court granted an Interdict, forbidding all other Ministers from entering the Church, Churchyard, or School-house of any of these Parishes. This Interdict was obeyed; but the Ministers called to the duty, went from Sabbath to Sabbath to these Parishes, and preached in the most convenient place they could find; and their labours appear to have been already acknowledged, by much blessing upon them.

Well, the seven Ministers of Strathbogie, who have been suspended, went on preaching, under the Court of Session's authority, and in direct and open defiance of the laws of the Church, and not content with this, they have now got another Interdict from the Court of Session, forbidding all Ministers of the Church *from entering those Parishes at all*, or preaching in them; and forbidding the other Ministers of the Presbytery to meet, or do anything as a Presbytery.

In this way, you see, the Court of Session has set

aside, and trampled upon the *spiritual authority of the Church of Scotland altogether.*

If this be obeyed, the Church can do no act at all of a spiritual kind, but just as the Court of Session allows. There is an end of all Church Government and Church Laws. All is yielded up to man's authority. The Civil power may next just as well tell us, who are Ministers, what texts to preach from, and you who are members of the Church, to hear only the Ministers whom they (the Court of Session) approve of, and none else. How would that suit? Ask yourselves.

It is your spiritual benefit and good that the Ministers of the Church are seeking. Did they seek their own, they had only just to do what the Court of Session ordered, and there would be an end of it. But, then, what is now the case of Auchterarder, and of Daviot, and of Marnoch, might be your case in this, or in any other Parish next, and if the Church did, in any of these cases, what the Court of Session ordered, it would come to be the Law in every case. The ministers are putting in peril, their whole worldly goods and comfort, and now their personal liberty, on your account. In doing this they are only doing their duty, according to the word of God, in not counting even their lives dear to them. But you owe a duty to yourselves, and to this cause, *for the cause is your own.* Some will say to you, that the Church of Scotland is rebelling against the Law. No charge can be more untrue than that; though it may be said by some, just from their not understanding the subject, and by others, because they do not wish to understand it.

I shall endeavour, shortly now, to show, that what the Church is doing is not rebellion, or any thing like it.

The Court of Session is set up by Acts of Parliament.

The Presbyteries, Synods, and General Assembly of the Church of Scotland have just as many and as good Acts of Parliament in their favor as the Court of Session has. They are Courts as well as the Court of Session is. Now, the Acts of Parliament, that set up the Court of Session, give that Court power to judge in civil and temporal matters. But these Acts never gave them power to judge in *spiritual matters at all*. Did the Church of Scotland refuse to obey the Court of Session in civil matters that would be rebellion ; but it has not done so. The Church has said to that Court—Take the Stipends, Manses, and Glebes, and dispose of them as you think proper, we shall not interfere, or resist. But when the Court of Session comes to the Church, and says, You must ORDAIN and place Ministers, in the way *We* (the Court of Session) direct you ; the Church could not do this without rebelling, both against its own Supreme King, and against the Law of the land too ; because the Law of the land has given power to Presbyteries, Synods, and General Assembly, to do these things according to the Laws of the Church itself, and the word of God, upon which the Laws of the Church are founded.

But look to it in this way : supposing that a Presbytery of the Church went to the Court of Session, or to the House of Lords, and said, You must decide this *Civil* case as we (the Presbytery) direct you ; then that Presbytery would be assuredly breaking the Law of the land, and rebelling ; and you may depend upon it that that Presbytery would very soon be punished, and justly so. And would not the Court of Session be breaking the Law, if they allowed any Presbytery to do this ? But here is now the Court of Session coming in to Presbyteries, and to the General Assembly, saying, You

must decide this *Spiritual* case, or do this spiritual duty, in the way *We* (the Court of Session) direct you, or keep back from doing spiritual duties when *We* command you. Surely, then, it is not these Presbyteries, or the General Assembly that are rebelling—they are rebelled against.

Besides, the Church Courts in Scotland, having, by the Civil Law, as I have stated, as much authority (even from men) to do their *Spiritual* duties as the Civil Courts have to do their *Civil* duties; it is worse than foolish to say that the Church, or its Ministers, are rebelling, because they do not as they are commanded by the *Civil* Court. Here is a comparison. The Court of Session has no authority or power to *hang* any one; but the Court of *Justiciary* has that power. Now, supposing the Court of Session would say to the Court of *Justiciary*, You must *hang* that man; Would it be *rebellion* in the Court of *Justiciary* to answer no, we will not *hang* him, at your bidding? No sensible person would call this rebellion. Or supposing that the Court of *Justiciary* sentenced a man to death; and that the Court of Session should say to the Court of *Justiciary* we command you to change the sentence,—would it be *rebellion* in the Court of *Justiciary* to say no, our sentence must stand? Surely it would not. Now, the Presbyteries and the General Assembly of the Church of Scotland, having their own duties allowed to them, just as much as the Court of *Justiciary* has its own duties set before it by the Law of the land,—when the Court of Session attempts to command these Courts of the Church, it is no *rebellion* in the Church to oppose the Court of Session. It is indeed a great misfortune to a country when such differences arise between Courts, and the only way is, to apply to Parliament, to set them

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right. But to call it rebellion, is just a saying without any meaning at all, or it is said with a very bad meaning, by people who would like to see the Church destroyed, or made the servant of the world. It would no longer be a church of Christ.

If the arm of the Civil Law is to govern and rule the Church in its spiritual duties, it is no longer a CHRISTIAN CHURCH ; it will then have departed from the duty it owes to HIM to whom you and I must give account. Whatever may happen, I leave this testimony with you. Let us all seek the protection and care of the great Shepherd of the flock ; and if enabled to trust in Him, He will bring us out of these difficulties, and cause them all to work for good.

APPENDIX .

In order to present something like a complete view of the tyrannical encroachments of the Civil Courts on the ecclesiastical jurisdiction of the Church of Scotland, and to shew that the Evangelical Clergy were virtually compelled to adopt a course of protest and separation, it is necessary to follow up the preceding statement by a brief notice of the progress of the controversy, subsequent to the year 1840. Let the man who imagines that the unity of the church could have been longer maintained, without a sacrifice of principle and a betrayal of great and sacred rights, attentively weigh the following *admitted facts*. He will thus find that although the troubles of the Church sprung, as has been shown, from the laws affecting the appointment of Ministers, they did not cease there, but decision after decision was passed by the Civil Courts, aiming at the regulation of almost every particular of her internal government,

and touching her most holy rights and privileges. It may be well to notice in regular succession, some of the more prominent of the numerous cases in which the collateral jurisdictions of the Ecclesiastical and the Civil Power came in collision, within the last four years.

I. The case of Culsalmond. The watchword of the Moderate party had been in the whole course of the controversy, "The law of the land." "Obey the law" was their unfailing argument. It was reserved for this singular case to show that they were ready, not only to disregard the law of the Church, which, by their ordination vows they were bound in all spiritual matters exclusively to obey, but to pay no higher respect to the law of the land, when it suited their purposes of aggression to neglect its injunctions. It had been the long established practice of the Church, and a practice recognised and confirmed by repeated Civil enactments, that the *Call* of the people should form a part of the preliminary proceedings in the appointment of a Minister. This *Call* had, it is true, dwindled away into little more than a form ; but still the form was considered necessary in every case. The Moderate Presbytery, however, who presided at the forced settlement of Culsalmond, were not content with refusing to the people the right of the Veto, but dispensed with the *Call* altogether, and settled the obnoxious Licentiate, Mr. Middleton, on the bare and insufficient authority of the Presentation. Even the leaders of their own party admitted that this procedure was irregular, and inconsistent with all law and custom. And yet, when the validity of the settlement was under discussion in the Church Courts, the Court of Session interdicted the execution of a sentence of a Church Judicatory, which prohibited this irregularly inducted

minister from preaching or administering the ordinances of religion within the parish. Sheltering himself under this interdict, Mr. Middleton proceeded to exercise ministerial functions in defiance of the authority of the Church. The General Assembly in due time rescinded the settlement, and declared it null and void. The Court of Session immediately suspended and interdicted the sentence, thus assuming to itself the power to establish the pastoral tie, and to set a refractory Licentiate of the Church over the cure of souls.

II. Case of Stranraer. In this instance, a Presbytery found it necessary to take cognisance of the criminal conduct of a Minister within their bounds. The Court of Session, on the application of the delinquent, interdicted the Presbytery from proceeding with the trial. They disregarded the interdict, and finding the Minister in question, after a full trial, guilty of fraud and swindling, deposed him from the office of the holy ministry, and ordered his church to be declared vacant. The *convicted Swindler*, relying on the Civil Power for support, persisted in retaining his charge, *and there he remains to this very day*. The Presbytery on the other hand, had their stipends arrested, and suits instituted against them for penalties in the Courts of Law. Six Presbyteries were in this position at the same time!

III. Case of Cambusnethan. The Minister of this Parish was libelled before the Lanark Presbytery for *theft*. The facts were so notorious that little or no defence was attempted, and when pronounced guilty, the culprit publicly acquiesced in the judgment. He applied, however, strange as it may appear, to the Court of Session, and when the Presbytery proceeded to pass sentence of deposition, an interdict appeared to prohibit the proceeding. This was of course disregarded, but

the confessed *Thief* continued under the authority of the Court of Session, and *still continues*, to exercise ministerial functions, and dispense the most sacred ordinances of religion.

It is unnecessary to multiply such instances. We may only allude, in addition, to the case of Urquhart, in which a Presbytery was interdicted from trying a Minister, notorious through the whole country for the most gross immorality; and the fourth case of Lethendy, in which a Presbytery was prohibited from proceeding with a libel against a Licentiate, for drunkenness, obscenity, and profane swearing.

IV. Case of Stewarton. In this important case, the Court of Session, by a majority of the Judges, suspended and interdicted the establishment of an additional pastoral charge, in a Parish too extensive for the superintendence of a single Minister and Kirk Session—prohibited the reception of the Minister of such a charge into the Presbytery, or the institution of a Kirk Session—and forbade any alteration in the state of the Parish as regards pastoral superintendence and spiritual discipline. The practical effect of this decision, if submitted to by the Church, would have been to extinguish about 200 pastoral charges, of eminent utility to the country, to annihilate as many Kirk Sessions in active operation, and to throw back the whole population of overgrown parishes (extending in one case to 110,000 souls) on the superintendence of a single Minister and Kirk Session. This decision was one of those last deadly blows, which rendered the disruption of the Church inevitable.

V. Case of Arbroath. The most holy and spiritual ordinances of religion were no longer secure from the unhallowed touch of the Secular Arm. The Civil Courts, startling as it may appear, assumed the right of

dictating to the Judicatories of the Church, to whom they should give and to whom they should refuse Christian privileges, including of course admission to partake of the Lord's Supper. Mark the following. An individual of wealth, in the Parish of Inverkeillour, Presbytery of Arbroath, had on one occasion entered the House of Prayer, during divine service, much inebriated, and created a disgraceful disturbance. At the return of what is called, in Scotland, the "Communion season," the Kirk Session refused this man the usual Token of admission to the holy ordinance. He applied to the Presbytery for redress, but that Court having approved of the conduct of the Minister and Elders of Inverkeillour, he had recourse to the Court of Session in Edinburgh, and forthwith obtained an interdict against both Presbytery and Kirk Session, threatening them with the utmost rigours of the law, should they persist in preventing him from partaking of the Sacrament of the Supper! Does not this fact speak volumes in itself?

We might go on to show, that it was now declared to belong to the Secular Power to determine, who should sit in Church Courts; supreme as well as subordinate—that members of Assembly were interdicted from taking their seats, and the Assembly interdicted from receiving them—but it is unnecessary. Indeed, so common had these civil interdicts at last become, that the office-bearers of the Church were liable to be interrupted by them in the most simple and peaceful duties of their calling. Nor was the Court of Session the only intruder, the subordinate authorities, in general, zealously followed its example. The following is a case in point. The Minister and Session of the Parish of Coldbrandspath, having chosen a few additional Elders out of the congregation, a *proprietor, non-resident in the Parish, and belonging*

to a different communion, took upon himself, as a Justice of the Peace, to prohibit these men from performing any of the duties of the eldership! Are these things generally known? And can any man who is aware of them, shut his eyes to the fact, that prior to the disruption of the Church, the whole province of her jurisdiction had been violently invaded, and scarcely one function left to be performed by her Courts, free from interference and coercion?

The final and decisive blow to the liberties of the Church was given by the Decision of the House of Lords in the Auchterarder case, in August 1843. It was then declared, that the Church was bound, as by a *civil obligation*, to proceed in the matter of the ordination and admission of ministers, at the bidding of the Civil Courts and without regard to her own sacred principles. And further, it was decided, that the rejection of a presentee in respect of the dissent of the congregation, according to the fundamental principle and law of the Church, was not merely an act to which the Civil Courts might refuse to give Civil effect, but in itself a Civil wrong or offence, and to be dealt with accordingly in the Courts of Law, the members of Presbytery being held in any such case *individually liable in reparation and damages to both Patron and Presentee*, as for the perpetration of an ordinary *civil wrong*. This decision, —resting as it did on an *entirely new interpretation* of the condition on which the Church held its temporal advantages, an interpretation of the nature of the agreement between the Church and State, which was *never hinted at before, or that agreement would never have been made*—forced on the faithful Ministers of the Church the important question “Can we remain connected with an Establishment, whose constitution is de-

clared to be such as this, and whose privileges we can only enjoy, by consenting to such terms as these?" Their situation became now most galling and oppressive. In the words of one of their number,* "An iron yoke has been wreathed around our necks, and iron fetters clasped firmly on our limbs. The State has declared itself our master, without a check or limit on the servitude, save its own good pleasure. Our spiritual jurisdiction has been denied and subverted, and our most solemn spiritual functions, exercised in the name of the Lord Jesus Christ, declared to be merely Civil Statutory duties, which the Courts could compel us to discharge under the heaviest penalties of the law. Instead of being Christ's freemen we were declared to be man's bond-slaves, not at liberty to obey a single law of Christ without the permission of an earthly judge! Thus it is denied that the Church of Christ has any laws of its own, any government given by Christ. It is denied that either Ministers or people have any spiritual rights. Every act of a Church Court is declared to be a *civil*, not a spiritual act. Calling Ministers, settling, ordaining, deposing, are all discovered *civil* acts, regulated entirely by Civil Law, controlled by Civil Courts, and to be rigorously enforced by Civil penalties! So that a Church has no powers and no laws at all, except what are given by the legislature of the land! This is now the declared constitution of the Church of Scotland."

Surely no man can view this melancholy picture, can mark the condition to which the church was now brought—and brought be it ever remembered, by a confessedly new interpretation of the law, and the infatuated refusal of the Government even to listen to the petition of the

* Rev. Horatius Bonar, of Kelso.

church and the people for legislative redress—and still persist in maintaining that the great body who now constitute the Free Protestant Church, could have continued consistently and conscientiously within the pale of the Establishment any longer than they did. They saw the constitution of the Church changed—her whole internal framework disorganized. The authority which the Church had always understood to be confirmed to her for ever by both the Act of Security and the Treaty of Union, was now in effect declared null and void. One after one, the usurpations of the civil power in spiritual matters followed in rapid succession, until stripped of her ancient rights, despoiled of her blood-bought liberties, the Church could exercise no sacred function, could perform no judicial act, without incurring secular censure, or being threatened with criminal punishment. On the original principles of the Church of Scotland, the Evangelical clergy took their stand, and to its now altered constitution they felt that they could not consent, without in effect denying the high and mighty truth, that the Lord Jesus Christ is the alone King and Head over his Church, and his word the only law for its government and direction. They admitted the right of the State to fix the conditions on which it should extend to the Church the benefits of an establishment, and now that these conditions were pronounced to be of a nature which they considered it sinful to accept, they declared that it was not for them, as servants of Him whose kingdom is not of this world, further to prolong the strife. The voice of duty called on them to separate from a church on which the unhallowed yoke of state-bondage had been laid, and in the hour of trial they faltered not. For the sake of a good conscience, they left the homes that they loved, and cast themselves on God, even the

God of their Fathers. They called to mind the days of old, the deeds of our Church in ancient times. They lingered not within the walls of the Erastian Establishment, but with a solemn protest constituted themselves into a separate, a free and spiritual communion, thus exhibiting to the eyes of an unbelieving world, a noble testimony, in behalf of the great and vital doctrines of the Headship of Christ, and the spiritual nature of His kingdom upon earth. Thus, resting on the sure basis of God's immutable truth, the Free Protesting Church is founded on a rock, and no enemy can prevail against her—the influence of her principles is growing and extending, and every day is adding to her strength. And now, once more, the religious people of Scotland are rallying around the old Blue Banner, by which their martyred fathers stood, and on which the words are written, as in letters of fire, **FOR CHRIST'S CROWN AND COVENANT.**

No one can be aware of the vital difference existing between the Free and the Residuary Churches of Scotland, without, at the same time, feeling that it is incumbent on the Presbyterian Church in Canada to adopt a more unequivocal and decided position with respect to them, than she now occupies. It must be evident, that a system of indiscriminate connection with the two, even were it not at variance with the consistency and purity of the Church, would soon prove impracticable, and destructive of her best interests. A crisis in her history is at hand. On the firmness of the special meeting of Synod in May her prosperity must under Providence depend, and whatever be the course then adopted, it must be a decisive one.

The following is an overture to the Synod, passed unanimously at a late meeting of the Hamilton Presby-

tery. It is worthy the attention of every true-hearted Presbyterian.

"That considering the disruption of the Established Church of Scotland which has recently taken place, and the conflicting views which are entertained by the members of the Free Church, and of the existing Establishment, on several important questions relating to the Government of the Church, and to the terms on which the Church can alone be lawfully united to the State, and considering the danger which might result to the best interests of the Church in this Province, from the admission of ministers holding unsound views on these subjects, the Synod, while taking such steps as they may deem fit for letting it be well understood that they act in this matter as a free and independent church, and do not directly involve themselves in the controversy carried on in Scotland, shall make specific declaration, that the following principles, which are now contended for by the Free Church of Scotland, have always been held by them as the original and unalterable principles of the Church of Scotland, and that they are still determined to enforce them as principles involved in the doctrine of the Headship of Christ, and identified with the purity and liberty of the Christian Church, viz. :

"1st. That the pastoral relation can only be legitimately founded on the free consent of the people, and that, whatever the form of nomination, no pastor should be intruded on a congregation contrary to the will of the majority, with or without reasons assigned.

"2nd. That in giving effect to the will of the people in calling a pastor, and generally in all matters ecclesiastical, the Church is responsible only to Christ--that the state has no right in any form to limit or control the right of the people to call a pastor, or the right of the office-bearers of the Church to establish or dissolve, as they shall see cause, the pastoral relation; and that any attempt, on the part of the State, to usurp such power, ought, at whatever cost, to be resisted as an intrusion into the ecclesiastical province, and an encroachment on the liberties of Christ's Church and people.

"3d. That the only terms on which the Church and State can lawfully be united, are on the one hand, the distinct recognition by the State in tendering its support to the Church, of the perfect independence of the Church in all matters ecclesiastical, and on the other, the acceptance of the endowments of the State of the Church without the compromise of any one of the rights or liberties with which Christ hath invested her rulers and people, and that to assent to a union between Church and State on any other terms, involves treason to Christ, —the sin of acknowledging not Christ, but Cæsar, as the head of the Church.

"That in accordance with this declaration, Presbyteries be instructed to require from all Ministers, Probationers and Elders, whom they may hereafter admit, a distinct and unequivocal expression of their adherence to the aforesaid principles, and that for this purpose a declaration, embodying the same, be added to the usual formulas subscribed by Ministers, Probationers and Elders. And farther, that a copy of the above declaration of principles, and the relative instructions to Presbyteries be communicated to the Free Church and Establishment of Scotland, as explanatory of the terms on which alone their Ministers, Missionaries and Elders can be received by this Synod, accompanied in the case of the Free Church, with a letter expressive of our approbation of the noble stand which they have made for the original principles of the Church of Scotland—our sympathy with them under their trials, and our desire for the establishment of a friendly intercourse with them—and, in the case of the Establishment, with a solemn but affectionate remonstrance against their departure from the principles of the Confession of Faith, and of the Church of their Fathers."

NOTICE

A large edition of Tract No. 1, having been disposed of, friends in the Country will see the necessity of sending in their orders without delay. A second impression of No. 1 will be thrown off, if the present demand continues.

TRACT No. 3,

Will shortly appear, containing "Farewell to Egypt," a beautiful Tract, descriptive of the disruption of the Church of Scotland; from the pen of the Rev. JAMES HAMILTON, of London, with an Appendix.

FEB. 11/31